

AMENDED IN ASSEMBLY AUGUST 11, 2016

AMENDED IN ASSEMBLY JUNE 14, 2016

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE APRIL 20, 2016

AMENDED IN SENATE APRIL 6, 2016

**SENATE BILL**

**No. 997**

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**Introduced by Senator Lara**

February 10, 2016

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An act to amend Section 1185 of the Civil Code, relating to notaries public.

LEGISLATIVE COUNSEL'S DIGEST

SB 997, as amended, Lara. Notaries public.

Existing law prohibits the acknowledgment of an instrument from being taken unless the officer taking it has “satisfactory evidence” that the person making the acknowledgment is the individual who is described in and who executed the instrument. Under existing law, “satisfactory evidence” means the absence of information, evidence, or other circumstances that would lead a reasonable person to believe that the person making the acknowledgment is not the individual he or she claims to be and, among other things, he or she presents a specified document that is either current or issued within 5 years that contains a photograph and description of the person named on it, the signature of the person, and a serial or other identifying number, as provided.

This bill would add an identification card issued by a federally recognized tribal government to the list of documents acceptable for identification purposes.

*This bill would also incorporate changes to Section 1185 of the Civil Code proposed by both this bill and AB 2566, which would become operative only if both bills are enacted and this bill is enacted last.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1185 of the Civil Code is amended to  
2     read:  
3     1185. (a) The acknowledgment of an instrument shall not be  
4     taken unless the officer taking it has satisfactory evidence that the  
5     person making the acknowledgment is the individual who is  
6     described in and who executed the instrument.  
7     (b) For purposes of this section, “satisfactory evidence” means  
8     the absence of information, evidence, or other circumstances that  
9     would lead a reasonable person to believe that the person making  
10    the acknowledgment is not the individual he or she claims to be  
11    and any one of the following:  
12    (1) (A) The oath or affirmation of a credible witness personally  
13    known to the officer, whose identity is proven to the officer upon  
14    presentation of a document satisfying the requirements of paragraph  
15    (3) or (4), that the person making the acknowledgment is personally  
16    known to the witness and that each of the following are true:  
17    (i) The person making the acknowledgment is the person named  
18    in the document.  
19    (ii) The person making the acknowledgment is personally known  
20    to the witness.  
21    (iii) That it is the reasonable belief of the witness that the  
22    circumstances of the person making the acknowledgment are such  
23    that it would be very difficult or impossible for that person to  
24    obtain another form of identification.  
25    (iv) The person making the acknowledgment does not possess  
26    any of the identification documents named in paragraphs (3) and  
27    (4).  
28    (v) The witness does not have a financial interest in the  
29    document being acknowledged and is not named in the document.  
30    (B) A notary public who violates this section by failing to obtain  
31    the satisfactory evidence required by subparagraph (A) shall be  
32    subject to a civil penalty not exceeding ten thousand dollars

1 (\$10,000). An action to impose this civil penalty may be brought  
2 by the Secretary of State in an administrative proceeding or a public  
3 prosecutor in superior court, and shall be enforced as a civil  
4 judgment. A public prosecutor shall inform the secretary of any  
5 civil penalty imposed under this subparagraph.

6 (2) The oath or affirmation under penalty of perjury of two  
7 credible witnesses, whose identities are proven to the officer upon  
8 the presentation of a document satisfying the requirements of  
9 paragraph (3) or (4), that each statement in paragraph (1) is true.

10 (3) Reasonable reliance on the presentation to the officer of any  
11 one of the following, if the document or other form of identification  
12 is current or has been issued within five years:

13 (A) An identification card or driver's license issued by the  
14 Department of Motor Vehicles.

15 (B) A passport issued by the Department of State of the United  
16 States.

17 (C) An inmate identification card issued by the Department of  
18 Corrections and Rehabilitation, if the inmate is in custody in prison.

19 (D) Any form of inmate identification issued by a sheriff's  
20 department, if the inmate is in custody in a local detention facility.

21 (4) Reasonable reliance on the presentation of any one of the  
22 following, provided that a document specified in subparagraphs  
23 (A) to (F), inclusive, shall either be current or have been issued  
24 within five years and shall contain a photograph and description  
25 of the person named on it, shall be signed by the person, shall bear  
26 a serial or other identifying number, and, in the event that the  
27 document is a passport, shall have been stamped by the United  
28 States Citizenship and Immigration Services of the Department of  
29 Homeland Security:

30 (A) A passport issued by a foreign government.

31 (B) A driver's license issued by a state other than California or  
32 by a Canadian or Mexican public agency authorized to issue  
33 driver's licenses.

34 (C) An identification card issued by a state other than California.

35 (D) An identification card issued by any branch of the Armed  
36 Forces of the United States.

37 (E) An employee identification card issued by an agency or  
38 office of the State of California, or by an agency or office of a city,  
39 county, or city and county in this state.

1 (F) An identification card issued by a federally recognized tribal  
2 government.

3 (c) An officer who has taken an acknowledgment pursuant to  
4 this section shall be presumed to have operated in accordance with  
5 the provisions of law.

6 (d) A party who files an action for damages based on the failure  
7 of the officer to establish the proper identity of the person making  
8 the acknowledgment shall have the burden of proof in establishing  
9 the negligence or misconduct of the officer.

10 (e) A person convicted of perjury under this section shall forfeit  
11 any financial interest in the document.

12 *SEC. 1.5. Section 1185 of the Civil Code is amended to read:*

13 1185. (a) The acknowledgment of an instrument shall not be  
14 taken unless the officer taking it has satisfactory evidence that the  
15 person making the acknowledgment is the individual who is  
16 described in and who executed the instrument.

17 (b) For purposes of this section, “satisfactory evidence” means  
18 the absence of information, evidence, or other circumstances that  
19 would lead a reasonable person to believe that the person making  
20 the acknowledgment is not the individual he or she claims to be  
21 and any one of the following:

22 (1) (A) The oath or affirmation of a credible witness personally  
23 known to the officer, whose identity is proven to the officer upon  
24 presentation of a document satisfying the requirements of paragraph  
25 (3) or (4), that the person making the acknowledgment is personally  
26 known to the witness and that each of the following are true:

27 (i) The person making the acknowledgment is the person named  
28 in the document.

29 (ii) The person making the acknowledgment is personally known  
30 to the witness.

31 (iii) That it is the reasonable belief of the witness that the  
32 circumstances of the person making the acknowledgment are such  
33 that it would be very difficult or impossible for that person to  
34 obtain another form of identification.

35 (iv) The person making the acknowledgment does not possess  
36 any of the identification documents named in paragraphs (3) and  
37 (4).

38 (v) The witness does not have a financial interest in the  
39 document being acknowledged and is not named in the document.

1 (B) A notary public who violates this section by failing to obtain  
2 the satisfactory evidence required by subparagraph (A) shall be  
3 subject to a civil penalty not exceeding ten thousand dollars  
4 (\$10,000). An action to impose this civil penalty may be brought  
5 by the Secretary of State in an administrative proceeding or a public  
6 prosecutor in superior court, and shall be enforced as a civil  
7 judgment. A public prosecutor shall inform the secretary of any  
8 civil penalty imposed under this subparagraph.

9 (2) The oath or affirmation under penalty of perjury of two  
10 credible witnesses, whose identities are proven to the officer upon  
11 the presentation of a document satisfying the requirements of  
12 paragraph (3) or (4), that each statement in paragraph (1) is true.

13 (3) Reasonable reliance on the presentation to the officer of any  
14 one of the following, if the document or other form of identification  
15 is current or has been issued within five years:

16 (A) An identification card or driver's license issued by the  
17 Department of Motor Vehicles.

18 (B) A passport issued by the Department of State of the United  
19 States.

20 (C) An inmate identification card issued by the Department of  
21 Corrections and Rehabilitation, if the inmate is in custody in prison.

22 (D) Any form of inmate identification issued by a sheriff's  
23 department, if the inmate is in custody in a local detention facility.

24 (4) Reasonable reliance on the presentation of any one of the  
25 following, provided that a document specified in subparagraphs  
26 (A) to ~~(E)~~, (F), inclusive, shall either be current or have been issued  
27 within five years and shall contain a photograph and description  
28 of the person named on it, shall be signed by the person, *and* shall  
29 bear a serial or other identifying number, ~~and, in the event that the~~  
30 ~~document is a passport, shall have been stamped by the United~~  
31 ~~States Citizenship and Immigration Services of the Department of~~  
32 ~~Homeland Security:~~ *number:*

33 (A) ~~A passport valid consular identification document issued~~  
34 ~~by a foreign government: consulate from the applicant's country~~  
35 ~~of citizenship, or a valid passport from the applicant's country of~~  
36 ~~citizenship.~~

37 (B) A driver's license issued by a state other than California or  
38 by a Canadian or Mexican public agency authorized to issue  
39 driver's licenses.

40 (C) An identification card issued by a state other than California.

1 (D) An identification card issued by any branch of the Armed  
2 Forces of the United States.

3 (E) An employee identification card issued by an agency or  
4 office of the State of California, or by an agency or office of a city,  
5 county, or city and county in this state.

6 (F) *An identification card issued by a federally recognized tribal*  
7 *government.*

8 (c) An officer who has taken an acknowledgment pursuant to  
9 this section shall be presumed to have operated in accordance with  
10 the provisions of law.

11 (d) A party who files an action for damages based on the failure  
12 of the officer to establish the proper identity of the person making  
13 the acknowledgment shall have the burden of proof in establishing  
14 the negligence or misconduct of the officer.

15 (e) A person convicted of perjury under this section shall forfeit  
16 any financial interest in the document.

17 *SEC. 2. Section 1.5 of this bill incorporates amendments to*  
18 *Section 1185 of the Civil Code proposed by both this bill and*  
19 *Assembly Bill 2566. It shall only become operative if (1) both bills*  
20 *are enacted and become effective on or before January 1, 2017,*  
21 *(2) each bill amends Section 1185 of the Civil Code, and (3) this*  
22 *bill is enacted after Assembly Bill 2566, in which case Section 1*  
23 *of this bill shall not become operative.*